

**Greenery Extended Care Center and Local 243,
International Brotherhood of Teamsters, AFL-
CIO. Case 7-CA-34641**

October 29, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On June 25, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 7-RC-19852. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 20, 1993, the General Counsel filed a Motion for Summary Judgment. On September 22, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response with affirmative defenses.

Ruling on Motion for Summary Judgment

In its response the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

¹ In its answer, the Respondent denies that the requested information is necessary for and relevant to the Union's performance of its duties. We note, however, that the description of the information sought on its face relates directly to the wages, hours, and terms and conditions of employment of the unit employees and we so find. In addition, the Respondent did not contest relevance in its response to the Notice to Show Cause, *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Farmington, Michigan, has been engaged in the operation of a nursing home. During the 12-month period preceding the filing of the charge, the Respondent, in conducting its business operations, derived revenues valued in excess of \$250,000 and purchased goods and materials valued in excess of \$50,000 from points located outside the State of Michigan and caused said goods and materials to be shipped directly to its Farmington, Michigan facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held August 21, 1992, the Union was certified on March 10, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time certified nursing assistants, housekeepers, cooks, dietary aides, respiratory therapists, supply clerks, ward clerks, laundry employees, and maintenance persons employed by Respondent at its facility located at 34225 Grand River, Farmington, Michigan; but excluding all office clerical employees, licensed practical nurses, registered nurses, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since March 19, 1993, and again on April 1, 1993, the Union requested the Respondent to bargain and to furnish information, and, since March 29, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 29, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and

² Member Raudabaugh did not participate in the representation case proceeding.

to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Greenery Extended Care Center, Farmington, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 243, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement.

All full-time and regular part-time certified nursing assistants, housekeepers, cooks, dietary aides, respiratory therapists, supply clerks, ward clerks, laundry employees, and maintenance persons employed by Respondent at its facility located at 34225 Grand River, Farmington, Michigan; but excluding all office clerical employees, licensed practical nurses, registered nurses, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Farmington, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 243, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time certified nursing assistants, housekeepers, cooks, dietary aides, respiratory therapists, supply clerks, ward clerks,

laundry employees, and maintenance persons employed by us at our facility located at 34225 Grand River, Farmington, Michigan; but excluding all office clerical employees, licensed practical nurses, registered nurses, guards and supervisors as defined in the Act.

GREENERY EXTENDED CARE CENTER